

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARKEL INSURANCE COMPANY, an
Illinois Insurance Company,

Plaintiff,

vs.

SECRET HARBOR, a/k/a Foster Care
Resources, a Washington non-profit
Corporation,

Defendant.

No.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Plaintiff Markel Insurance Company for its Complaint for Declaratory Judgment, pursuant to 28 U.S.C. §§1332 and 2201, by and through its counsel, Forsberg & Umlauf, P.S., alleges as follows:

I. THE PARTIES

1. Plaintiff Markel Insurance Company (“MIC”) is an Illinois corporation with its principal offices located in Glen Allen, Virginia. MIC is and engages primarily in the business of property and casualty insurance.

2. Defendant Secret Harbor, a/k/a Foster Care Resources, is a Washington non-profit corporation with its principal offices located in Burlington, Washington.

1 **II. JURISDICTION AND VENUE**

2 3. Secret Harbor is an agency involved in providing foster care programs for juvenile
3 boys, including residential care on Cypress Island in Skagit County, Washington.

4 4. This Court has original jurisdiction of this matter under 28 U.S.C. §1332, in that
5 this is a civil action between citizens of different states in which the amount in controversy
6 exceeds, exclusive of costs and interest, \$75,000.

7 5. This is a claim for declaratory relief as authorized by 28 U.S.C. §2201 and by Rule
8 57 of the Federal Rules of Civil Procedure.

9 6. An actual and justiciable controversy exists among MIC and its named insured;
10 whether there is insurance coverage under various primary and umbrella insurance policies issued
11 by MIC for various claims asserted by the underlying plaintiffs in the underlying lawsuits.

12 7. Venue is proper in the Western District of Washington because the Defendant is
13 licensed and registered with the Washington Secretary of State to conduct business and did, in fact,
14 transact business in the Western District of Washington at all times in question.

15 **III. THE UNDERLYING LAWSUITS**

16 8. The Defendant is a defendant in a number of underlying lawsuits (hereafter
17 “Underlying Lawsuits”) against it pending in the State of Washington (See Exhibit “A”).

18 9. At all times in question the Defendant provided therapeutic treatment services to
19 juveniles placed in its care, including (prior to 2008) at its residential facility on Cypress Island in
20 Skagit County, Washington.

21 10. Upon information and belief, many of the underlying plaintiffs were placed in the
22 care of the Defendant as an alternative to incarceration in a local or state correctional system. Upon
23 information and belief, the Defendant’s goals were to assist young men with therapeutic services

1 in order to re-enter society and lead successful lives.

2 11. Upon information and belief, many, if not all, of the underlying plaintiffs suffered
3 from psychological and emotional problems of various degrees, along with criminal histories, prior
4 to any interaction with the Defendant.

5 12. The Underlying Lawsuits allege that the Defendant was authorized to care for
6 juvenile children within the State of Washington when placed in the care of the Defendant by the
7 State of Washington.

8 13. The Underlying Lawsuits seek damages against the Defendant on behalf of the
9 underlying plaintiffs who, at various times between the late 1980s and prior to June 30, 2010, were
10 placed in the care of the Defendant and, up until 2008 when the facility closed, resided at the
11 facility on Cypress Island in Skagit County, Washington.

12 14. The underlying plaintiffs are identified in the Underlying Lawsuits by their initials
13 or legal names, and were allegedly placed with the Defendant on the following dates:

14 a. E.R was a ward of the State of Washington and was allegedly placed with
15 the Defendant at Cypress Island in the 1980s time frame;

16 b. J.S was a ward of the State of Washington and was allegedly placed with
17 the Defendant at Cypress Island between 1989 and 1993;

18 c. B.S was a ward of the State of Washington and was allegedly placed with
19 the Defendant at Cypress Island in the 1996-1998 time frame;

20 d. T.B was a ward of the State of Washington and was allegedly placed with
21 the Defendant at Cypress Island in the 1999-2002 time frame;

22 e. Mario Carter was a ward of the State of Washington at birth and alleges he
23 was abused in the mid to late 1980's;

1 f. J.H was a ward of the State of Washington and was allegedly placed with
2 the Defendant at Cypress Island in the 1996 time frame;

3 g. J.N. was a ward of the State of Washington and was allegedly placed with
4 the Defendant at Cypress Island in the 1984-88 time frame;

5 h. S.K. was a ward of the State of Washington and was allegedly placed with
6 the Defendant at Cypress Island in the 1993-1994 time frame;

7 i. D.R. was a ward of the State of Washington and was allegedly placed with
8 the Defendant at Cypress Island in the 1989-1992 time frame;

9 j. R.A. was a ward of the State of Washington and was allegedly placed with
10 the Defendant at Cypress Island in the 2001-2002 time frame;

11 k. S.S. was a ward of the State of Washington and was allegedly placed with
12 the Defendant at Cypress Island in the 2006-2008 time frame;

13 l. K.N. (a/k/a C.N.) was a ward of the State of Washington and was allegedly
14 placed with the Defendant at Cypress Island in the 1992-1994 time frame;

15 m. J.S. was a ward of the State of Washington and was allegedly placed with
16 the Defendant at Cypress Island in the 2003-2005 time frame;

17 n. M.M. was a ward of the State of Washington and was allegedly placed with
18 the Defendant at Cypress Island in the 1986-1988 time frame;

19 o. K.H. was a ward of the State of Washington and was allegedly placed with
20 the Defendant at Cypress Island around the 1998 time frame;

21 p. Z.G. was a ward of the State of Washington and was allegedly placed with
22 the Defendant at Cypress Island in the 2002-2005 time frame;

23 q. J.E. was a ward of the State of Washington and was allegedly placed with

1 the Defendant at Cypress Island in the 2001-2005 time frame;

2 r. A.M. was a ward of the State of Washington and was allegedly placed with
3 the Defendant at Cypress Island in the 1988 time frame;

4 s. J.B. was a ward of the State of Washington and was allegedly placed with
5 the Defendant at Cypress Island in the 1988-1990 time frame;

6 t. A.B. was a ward of the State of Washington and was allegedly placed with
7 the Defendant at Cypress Island in the 2003 time frame;

8 u. I.A. was a ward of the State of Washington and was allegedly placed with
9 the Defendant at Cypress Island in the 2009 time frame;

10 v. O.H. was a ward of the State of Washington and was allegedly placed with
11 the Defendant at Cypress Island in the 1987-1989 time frame;

12 w. C.D. was a ward of the State of Washington and was allegedly placed with
13 the Defendant at Cypress Island in the 1985-1990 time frame.

14 15. None of the underlying plaintiffs allege to have been in the care of the Defendant
15 on or after June 30, 2010.

16 16. The first MIC insurance policy issued to the Defendant incepted on June 30, 2010,
17 well after any underlying plaintiff was in the care of Defendant.

18 17. The first MIC insurance policy issued to the Defendant incepted on June 30, 2010,
19 well after any underlying plaintiff was a resident of Defendant's Cypress Island residential facility.

20 18. The Underlying Lawsuits allege that the Defendant was responsible for placing
21 underlying plaintiffs as residents at its Cypress Island residential facility before June 30, 2010.

22 19. The Underlying Lawsuits allege that the underlying plaintiffs each, individually
23 and separately, suffered physical abuse, including sexually, while in the care of Defendant. The

1 alleged abuse was allegedly carried out by Defendant's staff and/or other residents.

2 20. MIC agreed to provide a defense of the Defendant in the underlying lawsuits subject
3 to a complete reservation of rights.¹

4 21. Various disputes have arisen between MIC and the Defendant relative to the
5 respective rights, duties and obligations under the insurance policies issued on or after June 30,
6 2010 in light of the fact that the underlying plaintiffs do not allege any wrongdoing during a policy
7 period under a MIC insurance policy. In addition, the Defendant is now in receipt of a demand
8 from certain underlying plaintiffs for all available insurance limits, including MIC's.

9 **IV. THE POLICIES**

10 22. MIC issued seven primary commercial package policies with commercial general
11 liability coverage and seven umbrella insurance policies to Secret Harbor annually between June
12 30, 2010 and June 30, 2017 and two policies that combined commercial general liability and
13 commercial umbrella coverages between June 30, 2017 and June 30, 2019:

14 Policy No.	Policy Date	Policy Type
15 MIC 4602SS341648-0	6/30/2010 - 6/30/2011	Umbrella
16 MIC 4602SS341648-1	6/30/2011 - 6/30/2012	Umbrella
17 MIC 4602SS341648-2	6/30/2012 - 6/30/2013	Umbrella
18 MIC 4602SS341648-3	6/30/2013 - 6/30/2014	Umbrella
19 MIC 4602SS341648-4	6/30/2014 - 6/30/2015	Umbrella
20 MIC 4602SS341648-5	6/30/2015 - 6/30/2016	Umbrella
MIC 4602SS341648-6	6/30/2016 - 6/30/2017	Umbrella
MIC HUU2177-1	6/30/2017 - 6/30/2018	Umbrella
MIC HUU2177-2	6/30/2018 - 6/30/2019	Umbrella

21 MIC 8502SS341646-0	6/30/2010 - 6/30/2011	CGL - Abuse or Molestation
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23 ¹Reservation of rights letters were sent on Feb. 6, 2019; May 22, 2020; May 29, 2020; May 25, 2021; Nov. 1, 2021; Aug. 31, 2022; Sept. 6, 2022; Sept. 15, 2022; and Sept. 19, 2022.

Policy No.	Policy Date	Policy Type
		& Employee Defense (MGL 259 10/09)
MIC 8502SS341646-1	6/30/2011 - 6/30/2012	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)
MIC 8502SS341646-2	6/30/2012 - 6/30/2013	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)
MIC 8502SS341646-3	6/30/2013 - 6/30/2014	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)
MIC 8502SS341646-4	6/30/2014 - 6/30/2015	CGL - Abuse or Molestation & Employee Defense (MEGL 1263 (08-14))
MIC 8502SS341646-5	6/30/2015 - 6/30/2016	CGL - Abuse or Molestation & Employee Defense (MEGL 1263 (08-14))
MIC 8502SS341646-6	6/30/2016 - 6/30/2017	CGL - Abuse or Molestation & Employee Defense (MEGL 1263 (08-14))
MIC HUP2176-1	6/30/2017 - 6/30/2018	CGL - Abuse or Molestation & Employee Defense (MEGL 1263 (08-14))
MIC HUP2176-2	6/30/2018 - 6/30/2019	CGL - Abuse or Molestation & Employee Defense (MEGL 1263 (08-14))

23. MIC is not liable for the defense and/or indemnity of the Defendant with respect to the Underlying Lawsuits.

24. None of the alleged abuse or molestation of the underlying plaintiffs occurred during any MIC insurance policy period. Upon information and belief, the Defendant closed its residential facility on Cypress Island *before* MIC's first insurance policy issued to the Defendant.

25. The Commercial General Liability policies generally provide coverage for “bodily injury” taking place during a policy period caused by an “occurrence.” The policies define “occurrence” as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.” There is no coverage for any of the Underlying Plaintiffs’ claims that do not allege the happening of an accident, including but not limited to intentional conduct.

26. The Commercial General Liability coverage part of the primary policies provides limits of \$1 Million per occurrence and \$3 Million in the aggregate. However, each policy contains an abuse and molestation endorsement explicitly stating that regarding abuse or molestation, the limits are \$1 Million per person and \$2 Million in the aggregate.

27. Designated Premises Endorsements are contained in MIC primary liability policies for coverage years:

Policy No.	Policy Date	Policy Type
MIC 8502SS341646-0	6/30/2010 - 6/30/2011	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)
MIC 8502SS341646-1	6/30/2011 - 6/30/2012	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)
MIC 8502SS341646-2	6/30/2012 - 6/30/2013	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)

and are valid and enforceable exclusions from coverage under those policies and the Umbrella policies following form for corresponding years.² The absence of Secret Harbor’s facilities or location on Cypress Island on the Designated Premises Endorsements precludes coverage for the Underlying Lawsuits under these policy periods and corresponding the Umbrella policies.

²Umbrella Policies, 4602SS341648-0; 4602SS341648-1; and 4602SS341648-2.

28. In the alternative to no coverage, MIC is only liable for the defense and/or indemnity of the Defendant under only one primary policy year of coverage based upon the Abuse or Molestation & Employee Defense Coverage Endorsement with policy limits of \$1 Million per occurrence and \$2 Million in the aggregate, and for only one Umbrella / Excess policy year of coverage under the Umbrella / Excess policy's Abuse and Molestation Following Form Endorsement and Exclusion with policy limits of \$5 Million in the aggregate.

V. ABUSE AND MOLESTATION ENDORSEMENTS

The 2010 to 2014 Abuse Endorsements

29. The Abuse or Molestation & Employee Defense Coverage form in MIC Commercial General Liability Policy No. 8502SS341646-3³, [Form MGL 259 (10/09)], provides limited coverage for the defense and indemnity of claims involving abuse or molestation. That endorsement provides:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ABUSE OR MOLESTATION AND EMPLOYEE DEFENSE COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

Coverage	Limits of Insurance	Advance Premium
Abuse or Molestation	<u>\$1,000,000</u> per person, per occurrence. <u>\$2,000,000</u> aggregate per policy period.	*See policy schedule

³Policy period 6/30/2013 - 6/30/2014.

1 With respect to coverage provided by this endorsement, the
2 provisions of the Commercial General Liability Coverage Form
apply unless modified by this endorsement.

3 In consideration of the premium charged, the following is added to
4 Section I, Coverage A:

5 **A. COVERAGE**

6 **1. Insuring Agreement**

7 **a. Abuse or Molestation Coverage**

8 We will pay those sums the insured becomes
9 legally obligated to pay as damages that
10 result in “bodily injury”, “property damage”,
11 “personal and advertising injury”, or any
12 other injury because of abuse, molestation or
13 exploitation arising from negligent
14 employment, training, investigation,
15 reporting to the proper authorities, or failure
16 to so report, or retention and supervision of a
person for whom any insured is or ever was
legally responsible. Coverage includes the
actual, alleged, or threatened abuse,
molestation or exploitation by anyone of any
person while in the care, custody or control
of any insured.

The term “bodily injury” includes mental
anguish or emotional distress.

17 **b. Employee Defense Coverage**

18 We will also pay on your behalf “employee
19 defense costs” for an “employee” of the
20 insured who is alleged to be directly involved
21 in abuse, molestation or exploitation until
22 such time as that individual is adjudicated to
be a wrongdoer or enters a plea of no-contest
or is determined to be legally liable in the
civil discovery or investigative process.

23 The following is added as respects this
endorsement and Employee Defense

Coverage only. As respects Employee Defense Coverage, “employee defense cost” means costs to defend any claim or “suit” seeking damages to which this endorsement applies.

2. Exclusions

This insurance does not apply to:

- a. Costs, fines or penalties incidental to or arising from any criminal investigation or prosecution regarding abuse, molestation, or exploitation;
- b. Any obligation to pay fines, penalties, punitive damages, exemplary damages or aggravated damages;
- c. Any person who takes part in inflicting abuse, molestation, or exploitation upon another person; or
- d. Any person who remains passive upon gaining knowledge of any actual, alleged, or threatened abuse, molestation, or exploitation committed by an “employee” of the insured;
- e. Any person who remains passive upon gaining knowledge of any actual, alleged, or threatened abuse, molestation, or exploitation committed by a “volunteer worker” of the insured.

However, **Exclusions 2.c. and 2.d.** do not apply to coverage provided under **Insuring Agreement A.1.b. Employee Defense Coverage.**

B. LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Schedule of this endorsement fix the most we will pay for abuse, molestation, or exploitation.

Coverage **A.1.b., Employee Defense Coverage**, “employee defense costs” will not reduce the limits of insurance.

The coverage provided by this endorsement does not provide any duplication or overlap of coverage for the same claim or “suit”.

Multiple incidents of abuse, molestation or exploitation involving a person which take place over multiple policy periods for which this coverage is provided by us shall be deemed as one “occurrence” and shall be subject to the coverage and limits in effect at the time of the first incident.

The Limit of Insurance provided by this endorsement is not considered part of the Limit of Insurance provided by the Commercial General Liability Coverage Form.

No coverage in this policy is provided for abuse, molestation, exploitation or Employee Defense, except as provided herein, under this endorsement.

2. Subject to **3.** below, the per person Limit of Insurance shown in the Schedule of this endorsement is the most we will pay per person abused, molested, or exploited for the sum of all damages under **COVERAGE A.1.** The per person limit applies regardless of the number of incidents involving that person.

3. The aggregate per policy period Limit of Insurance shown in the Schedule of this endorsement is the most we will pay for the sum of all damages for all abuse, molestation, or exploitation incidents under **COVERAGE A.1.** of this endorsement.

The Limits of Insurance shown in the Schedule of this endorsement apply separately to each consecutive annual period

and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations of the Commercial General Liability Coverage Form, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

All other terms and conditions remain the same.

30. The 2010 to 2014 abuse endorsements stated the following regarding multiple incidents of abuse:

The coverage provided by this endorsement does not provide any duplication or overlap of coverage for the same claim or “suit”.

Multiple incidents of abuse, molestation or exploitation involving a person which take place over multiple policy periods for which this coverage is provided by us shall be deemed as one “occurrence” and shall be subject to the coverage and limits in effect at the time of the first incident.

31. The Abuse or Molestation & Employee Defense Coverage form in MIC’s Commercial General Liability Policy No. 8502SS341646-3, specifically excludes from coverage “[a]ny obligation to pay fines, penalties, punitive damages, exemplary damages or aggravated damages.”

32. The 2010 through 2014 policies:

Policy	Policy Date	Policy Type
MIC 8502SS341646-0	6/30/2010 - 6/30/2011	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)
MIC 8502SS341646-1	6/30/2011 - 6/30/2012	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)

Policy	Policy Date	Policy Type
MIC 8502SS341646-2	6/30/2012 - 6/30/2013	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)
MIC 8502SS341646-3	6/30/2013 - 6/30/2014	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)

used the same form for the abuse endorsement.⁴ *See Form MGL 259 (10/09).*

33. The Umbrella policies for the corresponding policy periods follow form, adopting the language of MGL 259 (10/09), by way of the Abuse and Molestation Following Form Exclusion [MUB 200 (08/03)].

The 2014 to 2019 Abuse Endorsement

34. The Commercial General Liability policies issued in 2014 through 2018 use a different form for the abuse endorsement which, includes coverage for “bodily injury” arising from abuse or molestation, but only where the abuse or molestation first took place during the policy period.

35. CGL Policy No. 8502SS346416-5⁵ contains an Abuse or Molestation and Employee Defense Coverage Form [MGL 1263 08 14] which provides:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE
READ IT CAREFULLY.**

**ABUSE OR MOLESTATION AND EMPLOYEE DEFENSE
COVERAGE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

⁴Form MGL 259 (10/09).

⁵Effective dates of 6/30/2015 to 6/30/2016.

SCHEDULE

Abuse Or Molestation Limits of Insurance:	\$1,000,00 Each Person \$2,000,000 Aggregate
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The following changes apply only to the coverage provided by this endorsement.

- A.** The following exclusion is added to Paragraph **2. Exclusions** under Section **I - Coverages**, Coverage **A - Bodily In- jury** And Property Damage Liability and Coverage **B - Personal** And Advertising Injury Liability:

This insurance does not apply to:

Abuse Or Molestation

“Bodily injury”, “property damage” or “personal and advertising injury” arising out of the actual or threatened abuse, molestation or exploitation by anyone. This exclusion applies even if the claim against the insured alleges negligence or other wrongdoing in the employment, investigation, supervision, reporting to the proper authorities or failure to so report, training or retention.

- B.** The following is added to Section **I - Coverages**:

ABUSE OR MOLESTATION AND EMPLOYEE DEFENSE COVERAGE

1. Insuring Agreement

a. Abuse Or Molestation Coverage

- (1)** We will pay those sums the insured becomes legally obligated to pay as damages because of “bodily injury” arising out of abuse, molestation or exploitation to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking such damages. However, we will have no duty to defend the insured against any “suit” seeking damages to which this insurance does not apply. Nor do we have a duty to defend any insured who is alleged to

have taken part in the abuse, molestation or exploitation except as provided under Paragraph **B.1.b.** Employee Defense Coverage. We may, at our discretion, investigate and settle any claim or “suit” that may result. But:

- (a) The amount we will pay for damages is limited as described in Paragraph **C. Limits Of Insurance** below; and
 - (b) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Abuse Or Molestation Coverage.
- (2) This insurance applies to “bodily injury” arising out of abuse, molestation or exploitation only if the abuse, molestation or exploitation:
- (a) Takes place in the “coverage territory”;
 - (b) Results from the insured’s negligence in employment, investigation, supervision, reporting to the proper authorities or failure to so report, training or retention; and
 - (c) First occurs during the policy period.
- (3) Abuse, molestation or exploitation which first occurs during the policy period includes any continuation, change or resumption of that abuse, molestation or exploitation after the end of the policy period.

36. MIC Commercial General Liability Policies:

Policy	Policy Date	Policy Type
<i>MIC 8502SS341646-4</i>	<i>6/30/2014 - 6/30/2015</i>	CGL - Abuse or Molestation & Employee Defense

Policy	Policy Date	Policy Type
		(MEGL 1263 (08-14)
<i>MIC 8502SS341646-5</i>	<i>6/30/2016 - 6/30/2017</i>	CGL - Abuse or Molestation & Employee Defense (MEGL 1263 (08-14)
<i>MIC HUP2176-01</i>	<i>6/30/2017 - 6/30/2018</i>	CGL - Abuse or Molestation & Employee Defense (MEGL 1263 (08-14)
<i>MIC HUP2176-02</i>	<i>6/30/2018 - 6/30/2019</i>	CGL - Abuse or Molestation & Employee Defense (MEGL 1263 (08-14)

contain identical Abuse or Molestation and Employee Defense Coverage endorsements [Form MGL 1263 08 14] as MIC Commercial General Liability Policy No. 8502SS346416-5.

37. The 2014 to 2019 abuse endorsements stated the following regarding multiple acts of abuse:

Multiple acts of abuse, molestation or exploitation of any one person by one or more perpetrators will be deemed to have first occurred at the time of the first act of such abuse, molestation or exploitation and shall be subject to the coverage and limits in effect at the time of the first act of abuse, molestation or exploitation.

and include the following regarding Multiple Coverage Forms Or Policies Issued By Us:

When two or more Coverage Forms or policies issued by us or any other Markel Corporation owned or operated insurance company apply to the same claim, "suit" or loss, the maximum limit of our liability under all such Coverage Forms or policies combined shall not exceed the highest applicable limit of liability under any one Coverage Form or policy among them.⁶

38. The Umbrella policies for the corresponding policy periods follow form, adopting the language of MEGL 1263 08 14, by way of the Abuse and Molestation Following Form Exclusion [MUB 200 (08/03)].

⁶Form MEGL 1263 08 14.

Designated Premises Endorsements in MIC Policies in 2010, 2011, 2012

39. MIC issued to named insured Secret Harbor Commercial General Liability Insurance policies for:

Policy	Policy Date	Policy Type
MIC 8502SS341646-0	6/30/2010 - 6/30/2011	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)
MIC 8502SS341646-1	6/30/2011 - 6/30/2012	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)
MIC 8502SS341646-2	6/30/2012 - 6/30/2013	CGL - Abuse or Molestation & Employee Defense (MGL 259 10/09)

each policy contains a designated premises endorsement. For instance, the Limitation of Coverage to Designated Premises form in MIC CGL Policy No. 8502SS341646-0⁷ [Form CG 21 44 07 98] provides:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

⁷Policy Period 6/30/2010 - 6/30/2011.

Premises:

The Social Services, Secret Harbor School aka Foster Care Resources, located at 225 N. Walnut St. Burlington, WA 98233 including off site operations arising out of this location.

Project:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

This insurance applies only to “bodily injury”, “property damage” or “personal and advertising injury” and medical expenses arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or

2. The project shown in the Schedule.

40. Identical designated premises endorsements, denominated as a “Limitation of Coverage to Designated Premises” endorsement⁸ are found in MIC CGL Policy No. 8502SS341646-1⁹, and in MIC CGL Policy No. 8502SS341646-2.¹⁰

41. For policy years 2010¹¹, 2011¹², and 2012¹³, the designated premises include and the Commercial General Liability Extension of Declarations forms list as the “Location of All Premises You Own, Rent or Occupy” the following Premise locations: (1) 225 N. Walnut St., Burlington, WA 98233; (2) 225 N. Walnut St. Suite 102, Burlington, WA 98233; (3) 225 N.

⁸Form CG 21 44 07 98.

⁹Policy Period 6/30/2011 to 6/30/2012.

¹⁰Policy Period 6/30/2012 to 6/30/2013.

¹¹Policy period 6/30/2010 to 6/30/2011.

¹²Policy period 6/30/2011 to 6/30/2012.

¹³Policy period 6/30/2012 to 6/30/2013.

1 Walnut St. Suite 103, Burlington, WA 98233; (4) 225 N. Walnut St. Suite 104, Burlington, WA
 2 98233; (5) 20224 Lafayette Rd. Burlington, WA 98233; (6) 6076 State Route 20 Anacortes, WA
 3 98221; (7) 16135 McLean Rd, Mount Vernon, WA 98273; (8) 939 State Street Sedro Wooley,
 4 WA 98284; and (9) 1102 22nd St. Anacortes, WA 98221.

5 42. There are no references to the Secret Harbor School, Secret Harbor as a location,
 6 or to Cypress Island, WA in any endorsement or other insurance document for the time period
 7 from 6/30/10 to 6/30/13 as the island facility was closed by this time.

8 **VI. FIRST CAUSE OF ACTION**

9 **DECLARATORY RELIEF REGARDING ABSENCE OF PROOF SEXUAL ABUSE OR** 10 **MOLESTATION FIRST OCCURRED DURING POLICIES**

11 43. MIC hereby realleges and incorporates by reference the allegations of paragraphs
 12 1 through 42 as though fully set forth verbatim.

13 44. The MIC Commercial General Liability policies for policy periods 2010 through
 14 2014¹⁴ use Abuse or Molestation & Employee Defense Coverage (MGL 259 (10/09)) which
 15 provide coverage for “bodily injury” arising out of abuse or molestation. The endorsement limits
 16 coverage for such incidents to the coverage provided in therein. Also, where multiple incidents
 17 take place over multiple policy periods, the incidents are deemed a single “occurrence” subject to
 18 the limits in effect at the time of the first incident.

19 45. The MIC Commercial General Liability policies for policy periods 2014 through
 20 2019¹⁵ use Abuse or Molestation & Employee Defense Coverage (MEGL 1263 08 14), which
 21 precludes coverage under the Commercial General Liability coverage part for “bodily injury”

22 ¹⁴Policy Periods 6/30/2010-6/30/2011; 6/30/2011-6/30/2012, 6/30/2012 -6/30/2013, and 6/30/2013-06/30/2014.

23 ¹⁵Policy Periods 6/30/2014-6/30/2015, 6/30/2015-6/30/2016, 6/30/2016-6/30/2017, 6/30/2017-6/30/2018, 6/30/2018-
 6/30/2019.

1 arising out of abuse or molestation, while adding abuse or molestation coverage for “bodily injury”
2 arising from abuse or molestation, but only where the abuse or molestation first occurs during the
3 policy period.

4 46. As specifically pleaded by the Underlying Plaintiffs, none of the claims of sexual
5 abuse or molestation alleged at the Secret Harbor location on Cypress Island, Skagit County,
6 Washington first took place or occurred during any of the MIC policy periods and, in fact, none of
7 the allegations of sexual abuse or molestation could have first occurred at the Secret Harbor
8 location on Cypress Island, Skagit County, Washington during the MIC policy periods, because
9 Secret Harbor ceased operations at the Cypress Island location on or before 2008.

10 47. Thus, the MIC policies provide no coverage for the sexual abuse or molestation
11 claims of the Underlying Plaintiffs as the incidents did not first occur during the policy periods of
12 the MIC policies.

13 48. As each MIC Excess / Umbrella Liability Insurance Policy adopts and incorporates
14 by its following form coverage, the language of the Abuse or Molestation & Employee Defense
15 Coverages, there is no coverage under the Umbrella Liability policies for each of the corresponding
16 coverage years.

17 49. Plaintiff MIC seeks a declaration from this Court that there is no coverage available
18 under either MIC Commercial General Liability Policies or MIC Excess / Umbrella Liability
19 Insurance Policies issued because none of the allegations of sexual abuse or molestation could
20 have first occurred at the Secret Harbor location on Cypress Island, Skagit County, Washington
21 during the MIC policy periods because Secret Harbor ceased operations at the Cypress Island
22 location on or before 2008.

VII. SECOND CAUSE OF ACTION

**DECLARATORY RELIEF REGARDING LIMITATION OF COVERAGE TO
DESIGNATED PREMISES FOR POLICIES ISSUED 2010-2011, 2011-2012 AND 2012
TO 2013**

50. MIC hereby realleges and incorporates by reference the allegations of paragraphs 1 through 49 as though fully set forth verbatim.

51. Per the Underlying Lawsuits, all incidents of physical and sexual abuse and molestation of the Underlying Plaintiffs took place at Secret Harbor's group home facility on Cypress Island, in the State of Washington.

52. Commercial General Liability Policies for the policy periods of 2010-2011, 2011-2012, and 2012-2013 each include identical Limitation of Coverage to Designated Premises or Projects Endorsements.

53. The Limitation of Coverage to Designated Premises or Projects Endorsements limit coverage to "bodily injury," "property damage," or "personal and advertising injury" and medical expenses arising out of the ownership, maintenance or use of the following premises as well as operations necessary or incidental to the premises:

- (a) 225 N. Walnut St., Burlington, WA 98233;
- (b) 225 N. Walnut St. Suite 102, Burlington, WA 98233;
- (c) 225 N. Walnut St. Suite 103, Burlington, WA 98233;
- (d) 225 N. Walnut St. Suite 104, Burlington, WA 98233;
- (e) 20224 Lafayette Rd. Burlington, WA 98233;
- (f) 6076 State Route 20 Anacortes, WA 98221;
- (g) 16135 McLean Rd, Mount Vernon, WA 98273;
- (h) 939 State Street Sedro Wooley, WA 98284; and

1 (i) 1101 22nd St. Anacortes, WA 98221.

2 54. The same premises were listed as the “Location of All Premises You Own, Rent or
3 Occupy” in the 2010 to 2013 policies’ Declarations.

4 55. Defendant’s group home on Cypress Island, WA location was not listed in any
5 policy endorsement or other insurance document for the time period between 6/30/10 to 6/30/13,
6 as the Cypress Island location was closed before the first MIC policy period.

7 56. The allegations of physical and sexual abuse and molestation of the Underlying
8 Plaintiffs at Secret Harbor’s group home facility on Cypress Island, in the State of Washington,
9 did not arise out of the ownership, maintenance, or use of any designated premises nor were such
10 incidents associated with operations necessary or incidental to any of the premises actually
11 designated or disclosed by Secret Harbor to MIC as covered locations.

12 57. MIC seeks a declaration from this Court that the Defendant’s group home on
13 Cypress Island, WA location was not designated as a covered premises for the period of time for
14 coverage years 2010-11; 2011-12; and 2012-13¹⁶, resulting in the exclusion from coverage for any
15 claims that arise from or occurred on Cypress Island for those coverage years.

16 58. Likewise, there is no coverage under the MIC Excess / Umbrella Liability Insurance
17 Policies for policy years 2010-11¹⁷; 2011-12¹⁸; or 2012-13¹⁹ for claims or injuries for sexual abuse
18 or molestation alleged by the Underlying Plaintiffs because each MIC Excess / Umbrella Liability
19 Insurance Policy adopts and incorporates, by its following form coverage, the Designated Premises
20 Endorsements of each corresponding MIC Commercial General Liability policy. Thus, there is no
21

22 ¹⁶Policy periods 6/30/2010-6/30/2011; 6/30/2011-6/30/2012; 6/30/2012-6/30/2013; and 6/30/2013-6/30/2014.

¹⁷ Excess / Umbrella Policy No. 4602SS341648-0.

¹⁸ Excess / Umbrella Policy No. 4602SS341648-1.

¹⁹ Excess / Umbrella Policy No. 4602SS341648-2.

1 coverage under the MIC Excess / Umbrella Liability Insurance Policies for the corresponding
 2 policy periods due to the Designated Premises Exclusions contained in the underlying primary
 3 liability insurance policies for coverage years 2010-11; 2011-12; and 2012-13²⁰.

4 59. Plaintiff MIC seeks a declaration from this Court that there is no coverage under
 5 MIC Excess / Umbrella Liability Insurance Policies²¹ for the claims of the Underlying Plaintiffs
 6 because coverage is precluded under the Commercial General Liability Policies' Limitation of
 7 Coverage to Designated Premises or Project endorsements for the 2010-11; 2011-12; and 2012-13
 8 policy periods and, by virtue of following form (per the Abuse and Molestation Following Form
 9 Exclusion)²² also excluded by the corresponding Umbrella policies.

10 **VIII. THIRD CAUSE OF ACTION**

11 **DECLARATORY RELIEF THAT "BODILY INJURY" IS UNAMBIGUOUS AND DOES** 12 **NOT INCLUDE RECOVERY FOR EMOTIONAL DISTRESS UNRELATED TO A** 13 **PHYSICAL INJURY DURING THE APPLICABLE COVERAGE PERIOD**

14 60. MIC hereby realleges and incorporates by reference the allegations of paragraphs
 1 through 59 as though fully set forth verbatim.

15 61. Each of the MIC Commercial General Liability Primary Policies redefine the term
 16 "bodily injury" to include "mental anguish or emotional distress" resulting from "bodily injury."

17 62. Under existing Washington law, "bodily injury" does not include damages for
 18 purely emotional injuries but instead requires that "mental anguish or emotional distress" must
 19 have a proximate and temporal nexus to physical or bodily injury to the claimant.

20 63. In light of the allegations of the Underlying Plaintiffs that the physical or bodily
 21

22 ²⁰Policy periods 6/30/2010-6/30/2011; 6/30/2011-6/30/2012; and 6/30/12-6/30/2013.

23 ²¹Policy Periods 6/30/2010-6/30/2011; 6/30/2011-6/30/2012; and 6/30/2012-6/30/2013.

²²Form MUB 200 (08/03).

injuries from sexual abuse or molestation took place in 2009, at the very latest, and as early as the early 1980s, any claims of “mental anguish or emotional distress” associated with mental anguish or emotional distress under the definition of “bodily injury” are excluded from coverage under the Abuse or Molestation and Employee Defense Coverage because such claims are too remote in time and thus not cognizable under Washington law (subsequent to a 2003 ruling) or the definition contained in MIC Commercial General Liability Insurance Policies, (issued after 2003).

64. Plaintiff MIC seeks a declaration from this Court that there is no coverage available under MIC Commercial General Liability Insurance Policies, all issued after 2003, for claims of “mental anguish or emotional distress” associated with the revised definitions of “bodily injury,” because such claims would be too remote in time to be causally related to earlier physical or bodily injury associated with allegations of sexual abuse or molestation that occurred five or more years before the inception of MIC Commercial General Liability Primary Policies.

65. For the same reasons, Plaintiff MIC further seeks a declaration from this Court that there is no coverage for “mental anguish” or “emotional distress” under the following form MIC Excess / Umbrella Liability Insurance Policies.

IX. FOURTH CAUSE OF ACTION

DECLARATORY RELIEF THAT THE ABUSE OR MOLESTATION & EMPLOYEE DEFENSE COVERAGE ENDORSEMENT PROVIDES LIABILITY LIMITS OF \$1 MILLION PER OCCURRENCE AND \$2 MILLION IN THE AGGREGATE AND EXCLUDES COVERAGE FOR PUNITIVE OR EXEMPLARY DAMAGES

66. MIC hereby realleges and incorporates by reference the allegations of paragraphs 1 through 65 as though fully set forth verbatim.

67. The Abuse or Molestation & Employee Defense Coverage forms in the MIC CGL policies provide limited coverage for the defense and indemnity of claims involving abuse or

1 molestation.

2 68. The Limits of Liability under the Abuse or Molestation & Employee Defense
3 Coverage Endorsements provide coverage in the amount of \$1 Million per person, per occurrence,
4 and \$2 Million aggregate per policy period.

5 69. Each of the Abuse or Molestation & Employee Defense Coverage forms exclude
6 fines, penalties, punitive damages and exemplary damages or aggravated damages.²³

7 70. Because the Underlying allegations allege abuse, molestation, exploitation and/or
8 the negligent hiring, training, investigation, reporting, or supervision, the Abuse or Molestation &
9 Employee Defense Coverage endorsement, if applicable to provide coverage, provides Secret
10 Harbor with coverage only up to the limits of liability of \$1 Million per person, per occurrence,
11 with \$2 Million in the aggregate.

12 71. Plaintiff MIC seeks a declaration from this Court that the Abuse or Molestation &
13 Employee Defense Coverage endorsements provide coverage limits only in the amount of \$1
14 Million per person and \$2 Million in the aggregate.

15 72. Plaintiff MIC seeks a declaration from this Court that the Abuse or Molestation &
16 Employee Defense Coverage Endorsements excludes coverage to Secret Harbor for any claims by
17 the Underlying Plaintiffs for punitive or exemplary damage in any of the Underlying Lawsuits.

18 **X. FIFTH CAUSE OF ACTION**

19 **DECLARATORY RELIEF THAT MIC EXCESS / UMBRELLA LIABILITY POLICIES'** 20 **ABUSE AND MOLESTATION PROVIDES LIABILITY LIMITS OF \$5 MILLION IN** 21 **THE AGGREGATE AND EXCLUDES COVERAGE FOR PUNITIVE OR EXEMPLARY** 22 **DAMAGES**

23 ²³Policy Periods from 6/30/2010-6/30/2014, under MGL 259 state that the insurance does not apply to “any obligation to pay fines, penalties, punitive damages, exemplary damages or aggravated damages.” Policy Periods from 6/30/2014-6/30/2019, under MEGL 1263 exclude “Fines and Penalties-any fines penalties, punitive damages, exemplary damages or aggravated damages.”

73. MIC hereby realleges and incorporates by reference the allegations of paragraphs 1 through 72 as though fully set forth verbatim.

74. As previously alleged above, each MIC Excess / Umbrella Liability Insurance Policy adopts and incorporates definitions, terms, conditions, exclusions and limitations contained in the “underlying insurance” by its following form coverage including the unambiguous and specific exclusion from the underlying MIC Commercial General Liability primary coverage for “fines, penalties, punitive damages, exemplary damages or aggravated damages.”

75. Additionally, each of the MIC Excess / Umbrella Liability Insurance Policies also include an exclusion for punitive damages (MUB 001 (08/03)).

76. The Limits of Liability under the MIC Excess / Umbrella Liability Insurance Policies²⁴ provide coverage in the amount of \$5 Million aggregate per policy period.

77. Plaintiff MIC seeks a declaration from this Court that the MIC Excess / Umbrella Liability Insurance Policy Abuse is valid and enforceable under Washington law, is unambiguous and specific with regard to its limits of liability in the amount of \$5 Million aggregate per policy period and is unambiguous and specific with regard to the fact that it excludes coverage to Secret Harbor for any claims by the Underlying Plaintiffs for punitive or exemplary damage in any of the Underlying Lawsuits.

XI. SIXTH CAUSE OF ACTION

DECLARATORY RELIEF THAT THE “ANTI-STACKING” OR “NON-ACCUMULATION” LANGUAGE RESTRICTS COVERAGE TO LIABILITY LIMITS OF \$1M PER OCCURRENCE, PER OCCURRENCE, AND TO \$5M IN THE AGGREGATE FOR ONLY ONE POLICY PERIOD

78. MIC hereby realleges and incorporates by reference the allegations of paragraphs

²⁴By and through Form MUB 200 (08/03).

1 through 77 as though fully set forth verbatim.

79. In the alternative and to the extent there is coverage, Plaintiff MIC seeks a declaration from this Court that the “anti-stacking” or non-accumulation language contained within the Abuse or Molestation & Employee Defense Coverage Endorsement of MIC’s Commercial General Liability policies and MIC’s follow form Excess / Umbrella Liability Insurance Policies provide only a single year of coverage and a total of policy limit of \$1 Million per person, per occurrence, and \$2 Million in the aggregate for the primary policy, and \$5 Million aggregate under the MIC Excess / Umbrella Liability Insurance Policy.

80. The Abuse or Molestation & Employee Defense Coverage form in MIC CGL Policy No. 8502SS341646-3²⁵, contains the following provision under the subheading “Limits of Insurance” regarding multiple claims or incidents of abuse:

The coverage provided by this endorsement does not provide any duplication or overlap of coverage for the same claim or “suit”.

Multiple incidents of abuse, molestation or exploitation involving a person which take place over multiple policy periods for which this coverage is provided by us shall be deemed as one “occurrence” and shall be subject to the coverage and limits in effect at the time of the first incident.

81. The identical Abuse or Molestation & Employee Defense Coverage endorsement²⁶, is included in all MIC Commercial General Liability policies issued to Secret Harbor between coverage years 2010 and 2014²⁷.

82. The above-quoted provision from the Abuse or Molestation & Employee Defense

²⁵Effective dates of 6/30/2013-6/30/2014 [Form MGL 259 (10/09)].

²⁶Form MGL 259 (10/09).

²⁷Policy periods 6/30/2010-6/30/2011; 6/30/2011-6/30/2012; 6/30/2012-6/30/2013; and 6/30/2013-6/30/2014.

Coverage endorsement²⁸, serves as an “anti-stacking” or “non accumulation” provision so that multiple incidents of abuse, molestation or exploitation which take place over multiple policy periods is deemed as one “occurrence” and limits the coverage to limits in effect at the time of the first incident, *i.e.*, coverage and limits are restricted to only one policy period.

83. In the MIC primary Commercial General Liability policies issued to Secret Harbor between coverage years 2014 and 2018²⁹, Abuse or Molestation & Employee Defense Coverage is provided³⁰, which, contains the following language regarding, occurrences, limits of insurance and multiple claims:

1. Insuring Agreement

a. Abuse or Molestation Coverage

2. This insurance applies to “bodily injury” arising out of abuse, molestation or exploitation only if the abuse, molestation or exploitation:

a. Takes place in the “coverage territory”;

b. Results from the insured’s negligence in employment, investigation, supervision, reporting to the proper authorities or failure to so report, training or retention; and

c. First occurs during the policy period.

3. Abuse, molestation or exploitation which first occurs during the policy period includes any continuation, change or resumption of

²⁸Form MGL 259 (10/09).

²⁹Policy periods 6/30/20-6/30/2015; 6/30/2015-6/30/2016; 6/30/2016-6/30/2017; 6/30/2017-6/30/2018; and 6/30/2018-6/30/2019.

³⁰Form MGL 1263 08 14.

1 that abuse, molestation or exploitation after
2 the end of the policy period.

- 3 4. Multiple acts of abuse, molestation or
4 exploitation of any one person by one or more
5 perpetrators will be deemed to have first
6 occurred at the time of the first act of such
7 abuse, molestation or exploitation and shall
8 be subject to the coverage and limits in effect
9 at the time of the first act of abuse,
10 molestation or exploitation.

11 ***

- 12 3. The following Conditions is added:

13 **Multiple Coverage Forms or Policies Issued By Us**

14 When two or more Coverage Forms or policies issued by us
15 or any other Markel Corporation owned or operated
16 insurance company apply to the same claim, “suit” or loss,
17 the maximum limit of our liability under all such Coverage
18 forms or policies combined shall not exceed the highest
19 applicable limit of liability under any one Coverage Form or
20 policy among them.

21 84. Since the above-quoted “anti-stacking” or “non accumulation” provisions are
22 contained in all MIC primary commercial general liability policies issued to Secret Harbor,
23 multiple incidents of abuse, molestation or exploitation which take place over multiple policy
periods are deemed to be one “occurrence” and coverage is limited to limits in effect at the time
of the first act or incident.

85. Since all MIC Excess / Umbrella Liability Insurance Policies issued to Secret
Harbor contain an Insuring Agreement adopting and following the form of exclusions contained
in the underlying primary Commercial General Liability insurance policy for that policy year, the
MIC Excess / Umbrella Liability Insurance Policies are also subject to the same “anti-stacking” or
“non accumulation” provisions, which deem multiple incidents of abuse, molestation or

1 exploitation over multiple policy periods a single “occurrence” and limits the coverage to coverage
2 and limits in effect at the time of the first incident of abuse.

3 **XII. PRAYER FOR RELIEF**

4 MIC Insurance Company prays for the following relief:

- 5 1. For a Declaratory Judgment in its favor that as set forth in Paragraphs 49, 57, 59,
6 64, 65, 71, 72, 77 and 79 alleged above;
- 7 2. For Plaintiff MIC Insurance Company’s attorneys’ fees and costs to the extent
8 permitted by law.
- 9 3. For such other and further relief as this Court may deem just and equitable.

10 **DEMAND FOR JURY TRIAL PURSUANT TO FED. R. CIV. P. 38**

11 Pursuant to Fed. R. Civ. P. 38(b), Plaintiff MIC Insurance Company demands a trial by
12 jury on any and all issues triable of right by a jury.

13 DATED this 2nd day of February, 2023.

14 s/Carl E. Forsberg

15 Carl E. Forsberg, WSBA #40720

16 s/James E. Horne

17 James E. Horne, WSBA #12166

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